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Before the  
Federal Communications Commission  
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of GTE Corporation, Transferor, )  
And Bell Atlantic Corporation, Transferee, )  
For Consent to Transfer of Control )  
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CC Docket No. 98-184

**COMMENTS OF WORLDCOM, INC. ON VERIZON EX PARTE FILINGS  
CONCERNING MERGER CONDITIONS TO BE WAIVED FOR VERIZON'S xDSL  
OVER RESOLD LINES SERVICE**

Pursuant to the Federal Communications Commission's ("Commission") Public Notice released on August 23, 2001 (DA 01-1987), WorldCom, Inc. ("WorldCom") hereby submits its comments regarding the request of Verizon Communications, Inc. ("Verizon") for waiver of several paragraphs of the Bell Atlantic/GTE Merger Conditions<sup>1</sup> so as to accommodate the provision of Verizon's new DSL Over Resold Lines ("DRL") Service.

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<sup>1</sup> *In re Application of GTE Corporation, Transferor, and Bell Atlantic Corporation, Transferee, For Consent to Transfer Control of Domestic and International Sections 214 and 310 Authorizations and Application to Transfer Control of a Submarine Cable Landing License*, Memorandum Opinion and Order, CC Docket No. 98-184 (rel. Jun. 16, 2000) Appendix D ("Merger Conditions").

## **Introduction**

Once again, Verizon is looking for a way out of its Merger Conditions.<sup>2</sup> Verizon's continued requests for waiver of its merger obligations have become tiresome. Additionally, Verizon has demonstrated that it is not particularly concerned about complying with the conditions that were put into place in an attempt to mitigate the competitive harms caused by the merger.<sup>3</sup> Given this backdrop, the Commission should ensure that the spirit of the Merger Conditions is upheld and that the overall effectiveness of the Merger Conditions is not undermined.

This waiver request is no different from past petitions. Verizon's August 10, 2001 waiver request is unsupported by any rationale – it is simply a bare request that the Commission once again excuse Verizon from the commitments Verizon made in order to secure approval of its merger. Verizon's purported "rationale" in its request is little more than a description of how the Merger Conditions would be violated in the absence of a Commission waiver. No credible justification is given as to why the Commission should grant Verizon's request.

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<sup>2</sup> Letter from Dee May, Executive Director, Federal Regulatory, Verizon, to Magalie Roman Salas, Secretary, Federal Communications Commission (Aug. 10, 2001) ("*Waiver Request*" or "*Request*").

<sup>3</sup> See, e.g., PriceWaterhouseCoopers, Report of Independent Accountants (dated June 1, 2001); See also PriceWaterhouseCoopers, Report of Independent Accountants on Applying Agreed-Upon Procedures (dated June 18, 2001); See also Letter from Maureen Flood, Director, Regulatory and State Affairs, Comptel, to Ms. Dorothy Attwood, Chief, Common Carrier Bureau, and Mr. David Solomon, Chief, Enforcement Bureau, Federal Communications Commission (Aug. 6, 2001).

### **Standard for Modification of Commission Orders**

Section 416(b) of the Communications Act, expressly authorizes the Commission “to suspend or modify its orders upon such notice and in such manner as it shall deem proper.”<sup>4</sup> Additionally, 47 C.F.R. § 1.3 allows for waiver of the Commission’s rules for “good cause.”<sup>5</sup> The D.C. Court of Appeals articulated the standard for waiver under 47 C.F.R. § 1.3 in *Northeast Cellular Telephone v. FCC*.<sup>6</sup> The court found that “waiver is appropriate only if special circumstances warrant a deviation from the general rule and such deviation will serve the public interest.”<sup>7</sup> Verizon has fallen dreadfully short of meeting this burden. To justify a modification and satisfy the public interest standard, Verizon must prove that waiver would be consistent with the procompetitive purposes of the Merger Conditions and the Communications Act, particularly the local competition requirements of section 251.

The *Northeast Cellular Telephone* court also pointed out that the Commission must “explain why deviation better serves the public interest and articulate the nature of the special circumstances to prevent discriminatory application and to put future parties on notice as to its operation.”<sup>8</sup> Based on the insignificant information that Verizon has disclosed in its request, the Commission will certainly be hard pressed to provide this explanation. Moreover, when a modification is opposed by any party to this proceeding, Verizon should

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<sup>4</sup> 47 U.S.C. § 416(b).

<sup>5</sup> 47 C.F.R. § 1.3.

<sup>6</sup> *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164 (D.C. Cir. 1990).

<sup>7</sup> *Id.* at 1166.

<sup>8</sup> *Id.*

also demonstrate it is necessitated by a change in circumstances that is unforeseen and unforeseeable.<sup>9</sup> No such showing has been proffered.

For example, Verizon requests waiver of its obligation to have Verizon Advanced Data, Inc. (“VADI”) operate in accordance with the structural, transactional, and non-discrimination requirements of 47 U.S.C. § 272(b), (c), (e), and (g).<sup>10</sup> Incredibly, Verizon maintains simply that, “[i]n order to facilitate the provision of DRL service and to plan a trial of this new service, VADI and the Verizon ILEC need the flexibility to coordinate their activities, exchange information and access each others systems in ways that may be inconsistent with the specified 272 provisions.”<sup>11</sup> This amorphous explanation is all that is provided. Apparently, Verizon sees no reason to explain why VADI cannot operate consistent with the requirements of the Merger Conditions.

**Verizon’s Wavier Request Should be Denied to Avoid Inequitable and Discriminatory Treatment of VADI’s Competitors**

Verizon requests waiver of the requirement that VADI and unaffiliated providers of Advanced Services have equal access to the same customer-specific information for pre-ordering and ordering that is available to the Verizon ILEC.<sup>12</sup> If this request were granted, it is clear that VADI would be afforded an unfair competitive advantage. Verizon points out that for the trial of DRL, “VADI may need to access certain ILEC systems that are not

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<sup>9</sup> *Cf. Rufo v. Inmates of Suffolk County Jail*, 502 U.S. 367 (1992) (standards for modification of judicial consent decree).

<sup>10</sup> *See Waiver Request at 1* (requesting waiver of para. 3 of Merger Conditions).

<sup>11</sup> *Waiver Request at 1*.

<sup>12</sup> *Id.*

accessible to the unaffiliated carriers.”<sup>13</sup> Why? Verizon provides no explanation of why this is necessary and it is doubtful that it could provide reasonable justification for such a request. It also demonstrates that despite Verizon’s promises during the merger application process, it has had no intention of treating VADI as a separate affiliate consistent with the Merger Conditions. Verizon’s motive is clear: it intends to give VADI preferential treatment to ensure that it has a competitive edge in the Advanced Services market.

Verizon also requests that the DRL service be initially exempt from the Carrier-to-Carrier Performance Assurance Plan mandated by the Merger Conditions. Verizon attempts to support this request by suggesting that the exemption will “allow Verizon and VADI an opportunity to gain commercial experience providing the new service.”<sup>14</sup> This is simply unsustainable. The Merger Order explicitly noted that the Carrier-to-Carrier Performance Assurance Plan was being employed “[a]s a means of ensuring that Bell Atlantic/GTE’s service to telecommunications carriers will not deteriorate as a result of the merger and the larger firm’s increased incentive and ability to discriminate, and to stimulate the merged entity to adopt ‘best practices’ that clearly favor public rather than private interests...”<sup>15</sup> Verizon is encouraging the Commission to take its one means of policing Verizon’s behavior and eliminate it so that Verizon and VADI have an “opportunity” to “gain commercial experience.” It is all too clear that this “opportunity” is one that will be had at the expense of VADI’s competitors. Moreover, Verizon’s plea that it needs to gain commercial experience rings hollow – the services that Verizon and VADI are reselling are ones they have been

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<sup>13</sup> *Id.*

<sup>14</sup> *Id.* at 3.

<sup>15</sup> *In re Application of GTE Corporation, Transferor, and Bell Atlantic Corporation, Transferee, For Consent to Transfer Control of Domestic and International Sections 214 and 310 Authorizations and Application to*

providing for years.

### **Verizon's DRL Offering**

Verizon is seeking a waiver from its merger conditions to accommodate provision of its new DSL Over Resold Lines Service offering, but Verizon has not committed to offer DRL throughout its entire region. Verizon has stated that it will provide the service in Connecticut and Pennsylvania, but has not addressed the rest of the Verizon region. For example, in testimony submitted in the Virginia Arbitration pending before the Commission, Verizon states that it is developing a new service known as "DSL Over Resold Lines" but notes that the service is not yet available in Virginia.<sup>16</sup>

Additionally, Verizon has not informed participants in the New York State Public Service Commission ("PSC") DSL Collaborative of its intention to offer DRL in New York or the rest of the region. In fact, WorldCom filed a letter with the New York PSC requesting that Verizon demonstrate that it is complying with the requirements of the *ASCENT v. FCC*<sup>17</sup> decision by tariffing a resold offering of DSL that is not dependent upon Verizon being the voice provider.<sup>18</sup> As the FCC made clear in its *Connecticut 271 Order*, "pursuant to the decision in *ASCENT*, Verizon is required to allow a competitive LEC to resell DSL service over lines on which the competitive LEC resells Verizon's voice service even though the

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*Transfer Control of a Submarine Cable Landing License*, Memorandum Opinion and Order, CC Docket No. 98-184 (rel. June 16, 2000), para. 279.

<sup>16</sup> *In the Matter of Petition of WorldCom, Inc., Pursuant to Section 252(e)(5) of the Communications Act for Expedited Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon-Virginia, Inc., and for Expedited Arbitration*, CC Docket No. 00-218, Verizon VA's Rebuttal Testimony on Non-Mediation Issues, Advanced Services (Aug. 17, 2001) at 62.

<sup>17</sup> *ASCENT v. FCC*, 235 F.3d 662 (D.C. Cir. 2001).

<sup>18</sup> Letter from Curtis L. Groves, Senior Attorney, WorldCom, to Eleanor Stein, Administrative Law Judge, New York Public Service Commission, Case 00-C-0127, (July 31, 2001) (attached hereto as Exhibit A).

DSL service is provided exclusively by Verizon's advanced services affiliate."<sup>19</sup> Thus, Verizon must make its DSL service available across its entire region.

There are other issues relating to DSL resale that the Commission must resolve. WorldCom raised these issues in the Pennsylvania Public Utility Commission 271 proceeding as well as the Virginia Arbitration. Those issues relate to resale of DSL over lines on which a CLEC provides voice via UNE-P or UNE loop.

Verizon should not prevent a CLEC from reselling VADI's DSL service on the same loops in which a competitor is providing local service via UNE-P. If WorldCom does not have the option of providing resold DSL on UNE-P loops, it will be limited in its ability to compete against Verizon, who can provide both voice and data on the same loop. Moreover, the Telecommunications Act does not preclude a carrier from combining UNEs with resale.

Verizon's refusal to allow UNE-P providers to resell Verizon's DSL service over the same line is an unreasonable and discriminatory limitation on resale. Section 251 prohibits ILECs from "impos[ing] unreasonable or discriminatory conditions or limitations on resale of telecommunications services."<sup>20</sup> Thus, Verizon's restriction on resale in the UNE-P context is both unreasonable and discriminatory particularly since there is no technical limitation as to why UNE-P carriers should not be permitted to resell Verizon's DSL service. Verizon's only basis for imposing such a restriction is to suppress competition.

Since Verizon/VADI has an obligation under *ASCENT* to make its DSL services available for resale, it must build the necessary operation support systems (to the extent it has

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<sup>19</sup> *In the Matter of Application of Verizon New York Inc, Verizon Long Distance, Verizon Enterprise Solutions, Verizon Global Networks Inc., and Verizon Select Services Inc, for Authorization to Provide In-Region, InterLATA Services in Connecticut*, Memorandum Opinion and Order, CC Docket No. 01-100, (July 20, 2001) para. 28.

<sup>20</sup> 47 U.S.C. § 251(c)(4)(B).

not already done so) to allow CLECs to order resold DSL. Providing resold DSL to WorldCom as a UNE-P provider should be no different than Verizon providing resold DSL to a voice-reseller. The front-end ordering process may be slightly different, but Verizon will recognize both types of orders as requiring the same technical configuration in the central office—the Verizon/VADI's DSL service configuration.

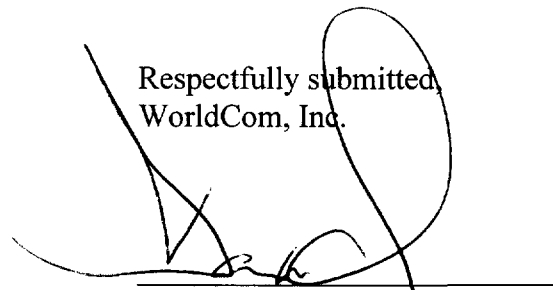


### **Conclusion**

For the foregoing reasons, WorldCom respectfully urges the Commission to deny Verizon's request for waiver of its Merger Conditions. Verizon has failed to demonstrate how the waiver request is consistent with the procompetitive purposes of the Merger Conditions. Additionally, as demonstrated herein, if the Commission grants this waiver request, Verizon will be allowed to treat competitors in a discriminatory manner and VADI will have an unfair competitive advantage which the Merger Conditions were intended to prevent. Verizon also has a legal obligation to provide resold DSL to competitors at a wholesale discount. Verizon has not demonstrated that it is indeed complying with its obligations to do so under Section 251 of the Telecom Act. Moreover, Verizon should be required to allow competitors to resell DSL over lines on which they are providing local service via the unbundled network platform. Accordingly, Verizon's petition should be denied.

Dated: September 5, 2001

Respectfully submitted,  
WorldCom, Inc.



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## Exhibit A



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July 31, 2001

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VIA E-MAIL

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Re: Case 00-C-0127

Dear Judge Stein:

The FCC, in its Conn. 271 Order ([http://www.fcc.gov/Bureaus/Common\\_Carrier/in-region\\_applications/verizon\\_ct/](http://www.fcc.gov/Bureaus/Common_Carrier/in-region_applications/verizon_ct/)), recently clarified the legal requirements pertaining to Verizon in light of the DC Circuit's decision in ASCENT v. FCC. The ASCENT decision held that data affiliates of ILECs are subject to all section 251(c) obligations. Pursuant to the ASCENT decision, the FCC concluded that "VADI must permit resale of DSL by a competitive LEC over lines on which the competitive LEC provides voice service through resale of Verizon service." (Conn. 271 Order ¶ 33) That is, Verizon must permit CLECs to resell VADI DSL service on lines on which the CLEC resells Verizon voice service. The FCC plainly rejected "Verizon's contention that it is not required to offer resale of DSL unless Verizon provides voice service on the line involved." (*Id.* at ¶ 30)

In light of these recent developments, WorldCom requests that Verizon demonstrate to the DSL Collaborative that it is complying with the requirements of the ASCENT decision in New York by tariffing a resold offering of DSL that is not dependent upon Verizon as the voice provider, consistent with the Conn. 271 Order. Verizon has tariffed an offering for Connecticut ([newscenter.verizon.com/policy/ct/docket/01-100-1.pdf](http://newscenter.verizon.com/policy/ct/docket/01-100-1.pdf)).

Also in the Conn. 271 Order, the FCC declined to address whether Verizon is required to permit resale of DSL over lines on which a CLEC provides voice via UNE-P or UNE loop, instead concluding that "resale of DSL service in conjunction with voice service provided using the UNE loop or UNE-P raises significant additional issues concerning the precise extent of an incumbent LEC's resale obligations under the Act and the ASCENT decision that we do not reach in this proceeding." (*Id.* at ¶ 33) WorldCom requests that this issue be added to the Collaborative's agenda, and that Verizon indicate whether it will permit the resale of DSL service on UNE-P voice lines.

Very truly yours,

Copies: All Active Parties

## Certificate of Service

I, Lonzena Rogers, do hereby certify, that on this fifth day of September, 2001, I have caused a true and correct copy of WorldCom's Comments in the matter of CC Docket No. 98-184 Merger Conditions To Be Waived For Verizon's xDSL Over Resold Lines to be served by United States Postal Service first class mail and hand delivery, on the following:

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